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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,445	09/10/2003	Victor Bota	116719.00011	4902

7590

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EXAMINER

GATES, ERIC ANDREW

ART UNIT

PAPER NUMBER

3722

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/659,445

Applicant(s)

BOTA, VICTOR

Examiner

Eric A. Gates

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/9/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12, drawn to an apparatus for forming a duct member from a work piece for use in an air handling system, classified in class 29, subclass 33R.
 - II. Claims 13-18, drawn to a method for forming a duct member for use in an air handling system, classified in class 29, subclass 425.
2. The inventions are distinct, each from the other because of the following reasons: Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the product can be made by another and materially different process. For example, the process as claimed can be performed by hand.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Robert Clark, attorney for the inventor, on 12 July 2005, a provisional election was made without traverse to prosecute the invention of a method for forming a duct member for use in an air handling system, as

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specified in claims 13-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

5. Applicant's claim for domestic priority for provisional application 60/492,931 under 35 U.S.C. 119(e) is acknowledged.

Information Disclosure Statement

6. The information disclosure statement (IDS) is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- a. Duct member 10, referenced in the specification on page 4, line 9, and page 7, line 3.
- b. Support block 72, referenced in the specification on page 5, line 4.
- c. Means 160, referenced in the specification on page 8, lines 14 and 17.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bota (U.S. Patent 6,378,184). Bota discloses a method for manufacturing ducts that meets the following requirements of the instant claim 13:

- a. a tubular work piece 10 is provided,
- b. said tubular work piece 10 is positioned in the automated adjustable duct machine 50,
- c. said tubular work piece 10 is clamped using clamp assembly 200,

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- d. said tubular work piece 10 is cut and positioned to form first and second members 12 and 14 along a plane at an angle to a radial plane perpendicular to the longitudinal axis of the tubular work piece 10,
- f. a bead 24 is formed between the two members 12 and 14 to allow relative rotation and interlocking of the members,
- j. the tubular work piece 10 is unclamped to allow repositioning or removal from machine.

In the specification, Bota alternatively discloses a mechanism to rotate the tubular work piece 10 180°, meeting the requirements of claim 1e and 1g; a positioning system to move the tubular work piece 10 to other predetermined longitudinal positions for cutting and forming more coupling beads, meeting the requirement claim 1h; and the use of a single workstation 50 to perform the multiple cutting and coupling bead forming steps in at least two predetermined locations, meeting the requirements of claim 1i and claim 15. In reference to claims 16-18, Bota also discloses a preferred cut angle of 15°, and the formation of a 90° adjustable duct member / adjustable elbow.

Claim Rejections - 35 USC § 103

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bota in view of Bellatorre (U.S. Patent 3,010,506). Bota discloses the invention substantially as claimed, except Bota does not directly disclose a cut angle of 22.5°. Bellatorre teaches cutting at a 22.5° angle, as shown in Figure 2, for the purpose of making a 90° elbow. Therefore it would have been obvious to one having ordinary skill in the art to have

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combined the duct member of Bota with the cut angle of Bellatorre in order to manufacture a three-piece 90° duct elbow cut at angles of 22.5°.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Molino (U.S. Patent 3,724,255) discloses a duct forming apparatus. Pawlaczyk (U.S. Patent 4,198,842) discloses a hand operated tube crimping apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric A. Gates whose telephone number is 571-272-5498. The examiner can normally be reached on Monday-Thursday 7:00-4:30 & alt Fridays 7:30-4:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


EAG

Eric A. Gates
Patent Examiner
Art Unit 3722


BOYER D. ASHLEY
PRIMARY EXAMINER